

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WALTER HOWARD,
Petitioner,

V.

ROBERT MURPHY,
Respondent.

Civil Action No. 04-12641-DPW

**RESPONDENT'S MOTION TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS AS TIME-BARRED**

Pursuant to Rule 16(b)(1) of the Federal Rules of Civil Procedure, the respondent respectfully submits this motion to dismiss the petition for writ of habeas corpus filed by the petitioner, Walter Howard. The petition must be dismissed as time-barred under 28 U.S.C. § 2244(d), the statute of limitations for federal habeas corpus petitions, which is contained in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). Because Howard’s conviction became final on November 25, 1992, prior to the enactment of AEDPA on April 24, 1996, he had a one-year grace period from the date of enactment to file a habeas corpus petition. Howard had to file his federal habeas petition before the lapse of the grace period on April 24, 1997. However, Howard did not bring this petition until November 25, 2004, over seven years after the grace period lapsed. Moreover, the statute of limitations was not tolled at any point between April 24, 1996 and April 25, 1997. Accordingly, the petition is untimely and should be dismissed.

WHEREFORE, the respondent respectfully requests that the Court dismiss this habeas petition with prejudice on the grounds that it is time-barred.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Susanne G. Reardon
Susanne G. Reardon, (BBO #561669)
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200, ext. 2832

Dated: January 13, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon petitioner, at the address below on January 13, 2005, by depositing the copy in the office depository for collection and delivery by first-class mail, postage pre-paid, to him as follows:

Walter Howard, pro se
30 Administration Road D2-11
Bridgewater, MA 02324

/s/ Susanne G. Reardon
Susanne G. Reardon
Assistant Attorney General